
(2011) 02 MAD CK 0116

In the Madras High Court

Case No : S.A. No's. 301 of 1998 and 940 and 941 of 1997

Udhagamandalam Municipality

APPELLANT

Vs

Good Shepherd Public School

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Tamil Nadu District Municipalities (Amendment) Act, 1992 — Section 217B, 217C, 217D, 217E, 217G

Tamil Nadu District Municipalities (Amendment) Rules, 1992 — Rule 58

Tamil Nadu District Municipalities (Hill Stations) Buildings Rules, 1993 — Rule 28

Tamil Nadu District Municipalities Act, 1920 — Section 216(1), 217N

Tamil Nadu Hilly Areas Special Building Rules, 1981 — Rule 10

Citation : (2011) 02 MAD CK 0116

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : P. Srinivas, for the Appellant; S.K. Raghunathan, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Appellant in all the appeals filed the suit for permanent injunction restraining the Respondents from putting up

further construction and for mandatory injunction to remove the construction put up by the Respondent without getting permission from the

Appellant.

2. According to the Appellant, the Respondent/school is situate within the 200 meters from the Ootacamund Lake and therefore as per Rule 10 of

the Tamil Nadu Hilly Areas Special Building Rules, 1981, the Respondent cannot put up the construction without getting the permission from the

Appellant and the Respondent without getting proper permission put up the construction and therefore notice was issued u/s 216 (1) and (2) of the

Tamil Nadu District Municipalities Act and the Respondent sent reply which was not acceptable, and thereafter started construction and hence, the suit was filed for the reliefs prayed for.

3. The contention of the Respondent was that the Appellant sought for permission and no action was taken and therefore, they presumed that permission was granted and they proceeded with the construction.

4. It was further contended that Rule 10 of the Tamil Nadu Hilly Areas Special Building Rules, 1981 will not apply to the facts of the case and the Respondent has not put up any new construction and they have only started constructing the first floor and therefore, there is no prohibition for putting up first floor.

5. During the pendency of the suit, Chapter XA was introduced into the Tamil Nadu District Municipalities Act by Tamil Nadu District

Municipalities (Amendment) Act, 1992 (Act 58 of 1992) and in pursuant to Section 217C, Tamil Nadu District Municipalities (Hill Stations)

Building Rules, 1993 was also passed and on the basis of the provisions of the Act 58 of 1992 and the Rules framed thereunder, trial Court held

that the Appellant has no power to take action and Civil Court has no jurisdiction to deal with the matter as per the provisions of Section 217N

and therefore, the suit is not maintainable and dismissed the suit.

6. The Lower Appellate Court confirmed the said findings and dismissed the appeal and hence the second appeal was filed.

The following substantial question of law were framed:

a) Whether in law, the provisions of Section 217N in Chapter XA of the Tamil Nadu District Municipalities Act, 1920 which excludes the

jurisdiction of the Civil Court, would apply to the facts of the present case, when admittedly, action was initiated u/s 216 (1) and (2), much prior to

coming into force of Chapter XA? Whether in law Chapter XA is retrospective in operation and applicable to the facts of the case?

b) Whether in law, the suit is bad for non-joinder State Government is neither a necessary nor a property party at all to the suit on the facts of the

case on the very pleadings as it is for the Plaintiff Municipality to enforce the provisions of the District Municipalities Act, 1920, excluding Chapter

XA?

c) Whether the courts below erred in law and misdirected themselves in their construction Chapter XA of the Tamil Nadu District Municipalities

Act, 1920 and holding that their jurisdiction is excluded in entertaining the suit instituted by the Municipality in seeking reliefs in respect of illegal

constructions put up prior to introduction of Chapter XA?

d) Whether in law, the Defendant is entitled to sustain its unauthorised construction, when admittedly, the building was constructed in flagrant

violation of the provisions of Tamil Nadu Building Rules, 1973, Tamil Nadu Hilly Areas Special Building Rules, 1981, Town and Country Planning

Act and Tamil Nadu District Municipalities Act, 1920?

7. It is submitted by the learned Counsel for the Appellant that though the Act 58 of 1992 was passed in the year 1982 and Chapter XA was

introduced into the Tamil Nadu District Municipalities Act, the suit was filed earlier to the passing of the Act 58 of 1992 in respect of the violation

committed as per the Tamil Nadu Hilly Areas Special Building Rules, 1981. Therefore, the suit can be prosecuted for the violation committed by

the Respondent prior to the force of the Act 58 of 1992.

8. It is further submitted that there is no provision in Chapter XA by which the proceedings already taken are abated or transferred and therefore,

the Court below erred in holding that by virtue of Act 58 of 1992 and the Rules framed thereunder, the suits are not maintainable.

9. On the other hand, Mr. Raghunathan, the learned Counsel for the Respondent submitted that the Appellant initiated action for having violated

the Rule 10 of the Tamil Nadu Hilly Areas special Building Rules, 1981 and as per the Rule 28 of the Tamil Nadu District Municipalities (Hill

Stations) Building Rules, 1993, the Tamil Nadu Hilly Areas Special Building Rules, 1981 shall cease to apply in so far as the Hill stations covered

under the Act. Therefore, the Appellant cannot proceed further on the basis of violation of Rule 10 of the Tamil Nadu Hilly Areas Special Building

Rules, 1981.

10. Mr. Raghunathan, the learned Counsel for the Respondent further submitted that Chapter XA was introduced by Act 58 of 1992 for the

regulation of the construction or re-construction of building. The use of lands in the Hill Stations and special procedures have been prescribed and

separate authorities are mentioned to take action with the provision for filing

appeal and review and further revision to this Court. Chapter XA is a Special Court which deals with the regulation of Building in the Hilly Areas and u/s 217(L), Civil Courts shall have no jurisdiction to decide or deal with any question which has to be decided by the State Government under the Act and there is no saving clause in the Act 58 of 1992 to save the pending proceedings. Therefore, the courts below has rightly held that after the coming into force of Rule 58 of 1992, the Appellant has no power to initiate action or continue the proceedings taken earlier and therefore, there is no merit in the second appeal.

11. Heard both the learned Counsel.

12. It is seen from the object of Act 58 of 1992 that the Act was passed and Chapter XA was introduced for the regulation of the construction or reconstruction of the buildings and the use of lands in the hill stations. Further, it has been stated that it has become necessary to control and regulate the construction and reconstruction of building in the hilly stations more particularly to preserve the scenic beauty and environment of Hill Stations in the State of Tamil Nadu by preventing unplanned mushroom growth of buildings. Chapter XA applies only to Hill Stations and Section 217(B) prohibits the construction or reconstruction of a building or using the agricultural land to any non-agricultural purposes or carryout on any engineering, mining or other allied operation on any land within the areas of the hill stations without a licence granted by the State Government and accept in accordance with the terms and conditions specified in such licence.

13. Section 217C deals with application for licence and the constitution of committee by the Government and Section 217D deals with grant of licence, Section 217E deals with the powers to cancel or suspend licence and Section 217G deals with penalties Section 217J empowers the State government to stop the construction or reconstruction and power of review u/s 217K and revisional power was conferred on this Court by Section 217L. Therefore, in respect of the construction and reconstruction and use of land in the hill stations, the power has been given to the State Government under Chapter XA. It is also stated u/s 217(L), Civil Court has no jurisdiction to decide or deal with any question which is by or under this Chapter required to be decided by the State Government. Section 217O further provides that the provision of this Chapter shall have

effect notwithstanding anything inconsistent with the provisions in this Act or any other law, custom or usage of contract. Therefore, a reading of

various provisions in Chapter XA makes it clear that in respect of construction and reconstruction and use of land in hill stations, the competent

authority is only the State Government. Hence, the action taken by the Appellant after the introduction of Chapter XA cannot be continued, as the

Appellant has no power to proceed further even though the Appellant has taken action in respect of the violation of Building Rules as per the

provisions of Rule 10 of Tamil Nadu Hilly Areas Special Building Rules, 1981 after the coming into force of Act 58 of 1992 and Tamil Nadu

District Municipalities (Hill stations) Building Rules, 1993.

14. As per Rule 28 of the said Rules, the Tamil Nadu Hilly Areas Special Building Rules, 1981 shall cease to apply. Therefore, after the coming

into force of Act 58 of 1992, Municipalities cannot take action.

15. As rightly submitted by the learned Counsel for the Respondent, there is no saving clause in the Act 58 of 1992 for saving the pending

proceedings. It was observed by Wood, V.C., in *Fitzgerald v. Champneys* (1861) 70 ER 958 that saving clauses are seldom used to construe

Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which but for the savings, would be lost. A section may be

prospective in some parts and retrospective in other parts. While it is the ordinary rule that substantive rights should not be held to be taken away

except by express provision or clear implication, many Acts, though prospective in form, have been given retrospective operation, if the intention of

the legislature is apparent.

In this case, the intention is apparent and it is stated in the object as stated above. Therefore, on coming to force of Act 58 of 1992, the

municipalities ceased to have power to take action and the power is vested with the State Government and in respect of pending proceedings also,

the Government is the competent person to take action and prosecute the matter. Hence, the substantial question of law 1, 3 and 4 are answered

against the Appellant.

16. Before the institution of the suits Act 58 of 1992 came into effect and Power was given to the State Government, Rules were also framed

pursuant to Section 217C of the Act 58 of 1992 and as per Rule 28, the Tamil

Nadu Hilly Areas Special Building Rules 1998 shall cease to apply.

Therefore, the suit is also bad for non-joinder of the necessary party viz., the State Government. Substantial question of law No. 2 is answered

against the Appellant. As the substantial questions of law are answered against the Appellant, the judgment and decree of the courts below is

confirmed and second appeals are dismissed. No costs.